

54393

NOV 29 1990

EXPRESS MAIL
RETURN RECEIPT REQUESTED

Mr. Stephen W. Holt
NL Industries, Inc.
Corporate Environmental Services
P.O. Box 1090
Hightstown, N.J. 08520

Dear Mr. Holt:

In your letter to Michael Gilbert of my staff dated November 21, 1990, you notified the U.S. Environmental Protection Agency (EPA) that a force majeure event has or will likely occur with respect to the stream sampling activities scheduled for the week of November 26, 1990. The sampling did not occur. The reasons cited in your letter include the inability of NL Industries, Inc. (NL) to obtain laboratory services for performing the L. Kahn method for TOC analysis, difficulties with access to off-site areas for sampling, and NL's position that two of the sampling locations (2 & 13) have been disturbed during recent sampling activities.

At this time, EPA believes that access has been obtained by NL to the off-site sampling locations, or that access may be gained through public lands adjacent to the west stream or route 130.

It is possible that EPA will agree to move locations 2 and 13 slightly to accommodate NL's concern about the disturbed locations. If this minor adjustment is not possible, however, the locations will remain. EPA is the final arbiter of any dispute regarding the sufficiency of the Work Plan, which includes the Sampling Plan, pursuant to the April 30, 1986, Administrative Order on Consent, Section I, Paragraph B.

Finally, EPA had made arrangements with NL that NL's contractor, O'Brien & Gere (OBG) would procure the depositional samples from the stream in accordance with the Amended Sampling Plan, as amended in letter dated November 15, 1990, prepare and bottle them in OBG's lab, and then turn them over to EBASCO, EPA's contractor, for analysis. NL or OBG will be directed to the sampling locations by EBASCO oversight staff in the field. EPA has made arrangements to have the depositional samples analyzed. EPA did not request that NL collect or analyze composite samples.

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|--------------|----------|------------|--------------|--|--|--|---------|------|
| SYMBOL ----> | SNJCS | SNJCS | NJCB | | | | | |
| SURNAME --> | GILBERT | LA PADULA | <i>Passo</i> | | | | | |
| DATE -----> | 11/29/90 | <i>JEJ</i> | 11/29/90 | | | | NLI 001 | 2368 |

Therefore, no force majeure exists because of NL's inability to collect or analyze composite samples which are not required by EPA. NL could have and should have proceeded with the previously scheduled plans to take depositional samples on November 26, 1990.

NL must obtain the depositional samples from the stream, prepare and bottle them, and then turn them over to EBASCO within 30 calendar days from receipt of this letter.

Please respond in writing within five (5) working days from receipt of this letter whether NL intends to comply with this timetable. In addition, please send a copy of such correspondence to Mr. David Rubin of EBASCO at the address below, so that he may make arrangements for oversight. EPA also requests that Mr. Rubin be kept apprised directly, in writing and by telephone when necessary, of any factors which may effect the sampling schedule.

EBASCO Services Inc.
160 Chubb Street
Lyndhurst, NJ 07071
201-460-6267

If NL chooses not to comply with this request, EPA will make alternative arrangements to obtain the samples as it is authorized to do under Section VII, Enforcement Actions, of the Administrative Order on Consent.

If you have any questions on the above, please call Michael Gilbert of my staff at (212) 264-6418.

Sincerely yours,

Raymond Basso, Chief
New Jersey Compliance Branch

cc: F. Hale, O'Brien & Gere
D. Rubin, EBASCO
C. Holstrom, NJDEP

bcc: J. La Padula, SNJCS
M. Gilbert, SNJCS
C. Fiske, ORC

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

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| <p>3. Article Addressed to:</p> <p>Mr. Stephen W. Holt NL Industries, Inc. Corporate Environmental P.O. Box 1090 Hightstown, N.J. 08520</p> | <p>4. Article Number</p> <p>FB598809959</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Certified <input type="checkbox"/> COD <input checked="" type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and <u>DATE DELIVERED</u>.</p> |
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| <p>7. Date of Delivery</p> | |